

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH DOW,

Plaintiff,

v.

LOWE'S HOME IMPROVEMENT, INC.,

Defendant.

Case No. C 05 03077 MMC

**STIPULATED CONFIDENTIALITY  
AGREEMENT AND PROTECTIVE ORDER**

Trial Date: January 16, 2007

**STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

Plaintiff Joseph Doe ("Dow") and Defendant Lowe's HIW, Inc. ("Lowe's"), by their respective counsel, hereby request that this Court enter a mutual protective order based upon the parties agreeing to the following statement of just cause:

1. Dow and Lowe's stipulate that the litigation in the above-captioned matter may require production of confidential information relating to certain current and former Lowe's employees and various of Lowe's policies, procedures and protocols pertaining to salary, bonus and compensation plans.

2. Dow and Lowe's agree that the misuse or unnecessary dissemination of the above-identified confidential information could violate the privacy of third parties or cause undue embarrassment to these persons.

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1           3.       Dow and Lowe's further stipulate that this proceeding may require production of  
2 documents that contain or disclose trade secrets or confidential information, including, but not  
3 limited to, financial data; operating procedures; salary, bonus and compensation data; and other  
4 proprietary compilations of commercial information. Dow and Lowe's agree that the public has no  
5 interest in the above-identified confidential information and competitors may gain unfair advantage  
6 through the dissemination of such information.

7           4.       Dow and Lowe's further agree that the misuse or unnecessary dissemination of the  
8 above-identified confidential and trade secret information would cause the parties to lose their  
9 respective competitive advantage and cause harm to their businesses and employees.

10           WHEREFORE, Dow and Lowe's hereby stipulate and agree, and further request that the  
11 Court, for the above stated reasons, enter a mutual protective order, as follows:

12           1. Dow and Lowe's may designate as "CONFIDENTIAL" or as "ATTORNEY'S EYES  
13 ONLY" any document, testimony, information or material disclosed through formal or informal  
14 discovery or otherwise in the course of this litigation as hereinafter set forth in Paragraphs 2, 3, and 4.  
15 Such designation shall subject the information produced or provided under said designation to the  
16 provisions of this Confidentiality Agreement.

17           2. Any document produced by any party or person in this litigation may be designated as  
18 "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" by Dow and Lowe's by placing the words  
19 "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" on the face of the document. Alternatively, a  
20 party may designate any document as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" by  
21 identifying such document(s) by bates number and designating it/them as "CONFIDENTIAL" or  
22 "ATTORNEY'S EYES ONLY" in a cover letter addressed to the opposing party's counsel and  
23 accompanying the production of such document(s).

24           3. Dow or Lowe's may designate deposition testimony or any portion of deposition  
25 testimony as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" by advising the reporter and  
26 counsel of such designation during the course of the deposition, or in writing within 10 days of the  
27 receipt of the deposition transcript. Transcripts will be treated as confidential for the 10-day period.  
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1 Whenever any writing designated as “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY” is  
2 identified as an exhibit in connection with testimony given or with any document filed with the  
3 Court in this case, it shall be so marked and separately filed under seal with the Court.

4 4. Dow or Lowe’s may designate as “CONFIDENTIAL” or “ATTORNEY’S EYES  
5 ONLY” specific responses to information requests by labeling the specific response  
6 “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY.”

7 5. Whenever any document, testimony, information or material designated as  
8 “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY” is used or submitted to the Court in  
9 conjunction with any filing or proceeding in this litigation, it shall be so marked and shall be filed  
10 separately under seal with the Court. The parties shall act in good faith and on a reasonable basis  
11 when designating material “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY.”

12 6. Except upon prior written consent of the party asserting “CONFIDENTIAL” treatment or  
13 upon further order of a court of competent jurisdiction, documents, testimony, information or material  
14 designated as “CONFIDENTIAL” shall be held in strict confidence and shall be used solely for the  
15 purposes of prosecution or defense of this litigation. Access to “CONFIDENTIAL” documents,  
16 testimony, information or material shall be limited to:

- 17 a. Counsel for the respective parties, including in-house counsel and co-counsel  
18 (and employees of said counsel who are assisting in the prosecution or defense  
19 of this litigation, such as administrative assistants or paralegals);
- 20 b. Experts and consultants (including independent experts and consultants, and  
21 employees or clerical assistants of said experts) who are employed, retained or  
22 otherwise consulted by counsel or a party for the purpose of analyzing data,  
23 conducting studies or providing opinions to assist in such litigation; and
- 24 c. Parties or officers or employees of the respective parties who have a  
25 reasonable business need to review such documents, testimony, information or  
26 material.

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1           7. "CONFIDENTIAL" documents, testimony, information or material shall not be disclosed  
2 to any expert or consultant (as defined in paragraph 6(b)), or to any officer or employee (as defined in  
3 paragraph 6(c)) of the opposing party, unless and until such person has signed and returned to all  
4 counsel a written agreement that he/she agrees to be bound by the terms of this Confidentiality  
5 Agreement.

6           8. Except upon prior written consent of the party asserting "ATTORNEY'S EYES ONLY"  
7 treatment or upon further order of a court of competent jurisdiction, documents, testimony,  
8 information or material designated as "ATTORNEY'S EYES ONLY" shall be held in strict  
9 confidence and shall be used solely for the purposes of prosecution or defense of this litigation.  
10 Access to "ATTORNEY'S EYES ONLY" documents, testimony, information or material shall be  
11 limited to:

- 12           a. Counsel for the respective parties, including in-house counsel and co-counsel  
13           (and employees of said counsel who are assisting in the prosecution or defense  
14           of this litigation, such as administrative assistants or paralegals); and  
15           b. Experts and consultants (including independent experts and consultants, and  
16           employees or clerical assistants of said experts) who are employed, retained or  
17           otherwise consulted by counsel or a party for the purpose of analyzing data,  
18           conducting studies or providing opinions to assist in such litigation.

19           9. "ATTORNEY'S EYES ONLY" documents, testimony, information or material shall not  
20 be disclosed to any expert or consultant (as defined in paragraph 8(b)) unless and until such person  
21 has signed and returned to all counsel a written agreement that he/she agrees to be bound by the terms  
22 of this Confidentiality Agreement, and then only in circumstances where the retained expert has a  
23 valid need to know the information or data.

24           10. No party shall, for itself or for any person or persons acting on its behalf, make more  
25 copies of any "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" information or material than  
26 are reasonably necessary to conduct this litigation.

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1 11. Except as otherwise provided for in this Confidentiality Agreement, all  
2 "CONFIDENTIAL" and "ATTORNEY'S EYES ONLY" information and material shall remain in the  
3 possession of counsel for the respective parties, and be stored in a secure place.

4 12. If Dow or Lowe's object to the designation of any document, testimony, information or  
5 material as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," it may, by motion, apply to the  
6 Court for a ruling that the document, testimony, information or material shall not be so treated. The  
7 burden shall remain with the party seeking confidentiality to justify such designation. Unless and  
8 until the Court enters an order to the contrary, the documents, testimony, information or material shall  
9 be given the "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" treatment initially assigned to it  
10 and provided for in this Confidentiality Agreement.

11 13. Should any party hereto seek to utilize any "CONFIDENTIAL" or "ATTORNEY'S  
12 EYES ONLY" document, testimony, information or material at trial or a hearing in this matter, it  
13 shall meet with counsel for the opposing party in an effort to agree upon a procedure to insure the  
14 confidentiality of such document, testimony, information or material. In the event counsel are unable  
15 to reach agreement, the matter will be submitted to the Court.

16 14. Upon termination of this litigation, all copies of "CONFIDENTIAL" and  
17 "ATTORNEY'S EYES ONLY" documents, testimony, information or material (and all summaries  
18 thereof) shall, upon request, be returned to counsel for the producing party(ies). Copies of materials  
19 designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" that have been filed with the  
20 Court may be returned to the filing party by the Clerk of Court, or destroyed. If not returned to  
21 counsel for the producing party(ies) within one year after termination of this litigation, all such  
22 documents, testimony, information or material (and all summaries thereof) shall be destroyed.

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1 15. This Confidentiality Agreement may be modified or amended by agreement of the parties  
2 or by further order of the Court for good cause shown.

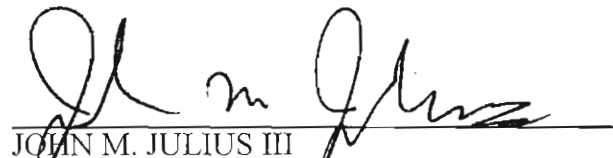
3 Respectfully submitted,

4 Dated: February 6, 2006



RICHARD M. ROGERS  
MAYO & ROGERS  
Attorneys for Plaintiff  
JOSEPH DOW

9 Dated: January 31, 2006



JOHN M. JULIUS III  
LITTLER MENDELSON  
A Professional Corporation  
Attorneys for Defendant  
LOWE'S HIW, INC., erroneously named herein as  
LOWE'S HOME IMPROVEMENT, INC.

15 Dated: February 7, 2006

16 SO ORDERED; provided that no document or portion thereof submitted for filing will be filed  
17 under seal absent a separate request, made upon an individualized showing of good cause in accordance  
18 with Civil Local Rule 79-5, and a separate order providing for the sealing of such document(s).



MAXINE M. CHESNEY, JUDGE  
UNITED STATES DISTRICT COURT

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